

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 769 OF 1990.

1. Milind Ramesh Bomdyal.
2. Markand Ramesh Bomdyal. ... Appellants.

Versus.

1. Pushpawati Dharmayya Ambal.
2. Dharmayya Rajayya Ambal.,
3. Ashok Revansidha Samane.
4. Sidramappa Madiwalappa Swami.
5. Oriental Insurance Co,
Chati Galli, Solapur, Dist.Solapur.
6. United India Insurance Co.Ltd.
Chati Galli, Solapurl. ... Respondents.

Shri V.B.Rajure for the Appellants.

Smt.Anita A.Agarwal for Respondents Nos.1 & 2

Shri G.S.Godbole for Respondents Nos.3 and 4.

Shri M.S.Sawant for Respondent No.6.

CORAM : ABHAY S.OKA, J.

DATED : 6th MARCH, 2006.

ORAL JUDGMENT.:

1. The challenge in this first appeal is to the Judgment and Award dated 5th March 1990 passed by the learned Member of the Ex.Officio Motor Accident Claims Tribunal, Solapur. The Respondents Nos.1 and 2 are the parents of the deceased Rajendra who died in the motor accident. The present Appellants are the original Opponents Nos.4 and 5. The Motor cycle which was involved in the accident is owned by the Appellant No.1 and the Appellant No.2 was driving the motor cycle at the relevant time. The Respondents Nos.3 and 4 are respectively the driver and the owner of the truck

involved in the accident. The Respondent No.5 is the insurance company with whom the truck was allegedly insured on the date of the incident. Respondent No.6 is also an Insurance Company. It is an admitted position that the motor cycle was validly insured with the Respondent No.6.

2. On 20th July 1987 the Appellant No.1 was plying the motor cycle bearing No.MFN 2997 and the deceased Rajendra was the pillion rider. They were proceeding towards Kinara Hotel situated at Hotgi, Solapur. A friend of the deceased was plying another motor cycle at the same time and was also proceeding towards Hotel Kinara. The case of the Respondent Nos.1 and 2 is that when Appellant No.1 reached near Hotel Kinara, the truck driven by Respondent No.3 bearing registration No.MHB 2034 came from the rear side and gave a dash to the motor cycle. As a result thereof, the Appellant No.1 and the deceased fell on the ground. Rajendra succumbed to the injuries suffered by him in the accident. The case of the Respondents Nos.1 and 2 was that the accident took place due to rash and negligence of the driver of the Truck. According to the Respondent No.1 and 2, the deceased Rajendra was 23 years at the time of accident and his monthly income was Rs.2300/-. The case of the Respondents nos.3 and 4 is that Appellant No.1 attempted to overtake the truck from the left side and he himself dashed on the rear side of the truck on the

cleaner's side. It is their contention that on the date of the incident the truck was insured. The case of the Appellants was that the incident took place due to the negligence on the part of the truck driver as the truck had attempted to over-take the motor cycle without blowing horn. The Insurance Company of the motor cycle has admitted that there was a valid insurance policy on the date of incident. However, it is contended that extra premium was not paid by the owner of the motor cycle. The case of the Respondents Nos.1 and 2 was that the accident took place due to the rash and negligent driving on the part of the driver of the truck.

3. According to the Respondents Nos.1 and 2 the deceased Rajendra was 23 years old at the time of accident and his monthly income was Rs.2300/- per month. The case of the Respondents Nos.3 and 4 is that the Appellant No.1 attempted to over-take the truck from the left side of the truck and in that process it dashed to the rear side of the said Truck on the cleaner's side. On behalf of the Insurance Company, it was contended that on the date of the incident the truck was not insured. The case of the Appellant was that the accident took place due to the negligence on the part of the truck driver as the truck had attempted to over-take the motor cycle. The insurance company of the motor cycle admitted that there was a valid policy of insurance on the relevant date. However, it is

contended that as extra premium was not paid by the owner of the motor cycle, the insurance company was not liable to pay compensation to the pillion rider. The learned Member of the Tribunal allowed the application and fixed the compensation amount at Rs.60,000/-. Respondents Nos.1, 2 and 3 were also awarded interest at the rate of 12% per annum from the date of application till the claim is fully satisfied.

3. Shri Rajure appearing for the Appellant submitted that the evidence on record clearly shows that it was the truck which was attempting to overtake the motor cycle without giving any signal. He submitted that the evidence on record clearly shows that there was no negligence on the part of the Appellant No.1 and the accident was due to rash and negligent driving by the driver of the truck. He submitted that once it is admitted that the motor cycle was validly insured on the date of the accident with the Respondent No.6-Insurance Company, even assuming that there was some negligence on the part of the Appellant No.1, the Respondent No.6-Insurance Company is liable to pay the compensation awarded against the owner of the motor cycle. He submitted that the compensation amount is on the higher side. I also heard the Advocate appearing for the Respondents. I have perused the notes of evidence and the documents on record.

4. The following three questions arise for my consideration:

- i) Whether the accident occurred due to the negligence on the part of Appellant No.1 ?
- ii) If answer to question No.1 is in the affirmative, whether Respondent No.6-Insurance Company is liable to pay compensation ?
- iii) Whether the compensation amount awarded is excessive ?

5. So far as the first question is concerned, on consideration of evidence, the Tribunal has found that the negligence is on the part of the driver of the motor vehicle. A perusal of the panchanama shows that width of the road at the spot of accident is 25 feet and the katcha road is having width of 5 feet on both the sides of the road. The Tribunal has rightly observed that ordinarily two motor vehicles can easily pass along the road simultaneously. There is evidence on record to show that at the relevant time the truck was laden with 100 bags of wheat. The motor cycle was also proceeding along the same road and in the same direction.

6. The Appellant No.1 has stepped into the witness box and so also the driver of the truck. According to

the version of the Appellant No.1, the truck arrived from his rear side and gave a dash to the rear side of the motor cycle. However, perusal of the panchanama reveals that the damage to the motor cycle is on the front side and not on the rear side. However, the attempt of Appellant No.1 was to show that the motor cycle was given dash on its rear side. In the cross-examination, he admitted that while recording his evidence in Criminal Case, he did not state before the criminal court about the manner in which the truck dashed against the motor cycle. Admittedly he did not depose before the Criminal Court that the truck came from rear side and gave a dash to the motor cycle. In the examination-in-chief, he stated that the truck came from rear side and dashed the motor cycle on its rear side. In the course of examination-in-chief, he tried to make out a case that left rear side of the truck dashed against the deceased. As against this inconsistent version, the evidence of the driver of the truck seems to be more consistent. He stated that when he saw the motor cycle coming from the rear side and was blowing horn, he gave him signal requiring him to wait. However, after sometime he heard a sound from the cleaner's side of his vehicle and he stopped the vehicle. Though there is some confusion about the fact as to whether signal by hand was given by the driver of the truck or not, it is obvious that when the accident took place the motor cycle was on the left side of the

truck and it dashed against the rear left side of the truck. It appears from the record that the site at which the accident took place there is a steep climb towards Kinara Hotel. As stated earlier, the truck was heavily loaded and was moving along the steep portion of the road. Considering all these facts the Tribunal has found that it was Appellant No.1 who was trying to overtake the truck from its wrong side i.e. from the left side. No fault can be found with the said finding recorded by the learned Tribunal.

7. Turning to the second question, a perusal of the copy of policy which is produced at Exh.52/1, it is crystal clear that the policy is issued subject to I.M.T. endorsements printed on the policy. From the endorsement it appears that only on payment of the additional premium as stated in the schedule, in case of an accident, the insurance company undertakes to pay compensation to any unnamed driver and/or pillion passenger. A perusal of the policy shows that no such additional premium has been paid. This is the reason why the Tribunal found that on the basis of the material on record, the insurance company was not liable to pay compensation, in view of the condition in the policy. Thus no fault can be found with the view taken by the learned Tribunal.

8. As far as quantum of compensation is concerned,

the learned Member of the Tribunal has relied upon the income tax assessment orders and has fixed compensation on the basis of the taxable income as reflected from the assessment orders. The yearly income of the deceased who was only 23 years of age at the time of accident is taken as Rs.12,000/-. The deduction of one third amount on account of personal expenses made by the Tribunal is also reasonable. No fault can be found with the multiplier applied by the learned Tribunal. It is obvious from the assessment orders which are on record that there would have been substantial increase in future in the income of the deceased. Therefore, the quantum of compensation fixed at Rs.60,000/- by the learned Tribunal cannot be said to be excessive. It is just and fair amount.

9. Hence there is no merit in the Appeal and the Appeal is dismissed. There will be no order as to costs.

Judge.